



STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION

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JOHN ELIAS BALDACCI
GOVERNOR

DAVID P. LITTELL
COMMISSIONER

MEMORANDUM

TO: The Board of Environmental Protection
FROM: Chris Coppi, Bureau of Land and Water Quality
RE: Consent Agreement for Robert W. Barris, III

DATE: December 2, 2010

Statute and Rule Reference: The *Natural Resources Protection Act*, 38 M.R.S.A. Section 480-C, prohibits, in pertinent part, placing, or causing to be placed, soil material in a coastal wetland without first obtaining a permit from the Department.

Location: Saco

Description: On November 3, 2009, an inspection of Mr. Barris' property by Department staff revealed that he had caused soil material to be placed in approximately 1,350 square feet of coastal wetland to create additional lawn area. Robert W. Barris III did not first obtain a permit from the Department for this activity. At the time of inspection, the project site was stabilized with vegetation.

Environmental Issues: Coastal wetlands are critical habitats for a wide range of bird species, including migratory shorebirds and waterfowl. These habitats are vital to their survival as they serve their ecological and biological needs including feeding, nesting, and breeding throughout their harsh annual migration.

In January 2010, Mr. Barris submitted an acceptable restoration plan to remove fill material to original wetland grade and restore salt tolerant vegetation in the disturbed wetland which was approved by staff. By June 11, 2010, Mr. Barris restored the coastal wetland in accordance with the approved restoration plan and to staff's satisfaction. Staff will conduct a follow-up inspection by June 30, 2011 to monitor the restoration area for reasonable success of replanted vegetation in accordance with the approved plan and to staff's satisfaction.

Department Recommendation: The Department recommends acceptance of this Consent Agreement stipulating that a restoration plan be submitted and a monetary penalty of \$2,682.00, both of which have been completed. The penalty is based on the Department's penalty policy and reflects that the violation was foreseeable and the length of time taken to bring the project into compliance.

AUGUSTA
17 STATE HOUSE STATION
AUGUSTA, MAINE 04333-0017
(207) 287-7688 FAX: (207) 287-7826
RAY BLDG., HOSPITAL ST.

BANGOR
106 HOGAN ROAD, SUITE 6
BANGOR, MAINE 04401
(207) 941-4570 FAX: (207) 941-4584

PORTLAND
312 CANCO ROAD
PORTLAND, MAINE 04103
(207) 822-6300 FAX: (207) 822-6303

PRESQUE ISLE
1235 CENTRAL DRIVE, SKYWAY PARK
PRESQUE ISLE, MAINE 04769-2094
(207) 764-0477 FAX: (207) 760-3143



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STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION

JOHN ELIAS BALDACCI

GOVERNOR

DAVID P. LITTELL

COMMISSIONER

IN THE MATTER OF:

| | | |
|-----------------------------|---|-------------------------------|
| ROBERT W. BARRIS III |) | ADMINISTRATIVE CONSENT |
| SACO, YORK, MAINE |) | AGREEMENT |
| NRPA |) | (38 M.R.S.A. § 347-A) |
| 2009-137-L |) | |

This Agreement by and among Robert W. Barris III, the Maine Department of Environmental Protection ("Department"), and the Maine Office of the Attorney General is entered into pursuant to the laws concerning the Department's *Organization and Powers*, 38 M.R.S.A. § 347-A(1).

The parties agree as follows:

1. Robert W. Barris III resides at and owns a parcel of land at 47 Ferry Lane, Saco, Maine, 04072 as described and recorded in Book 9488 on Page 262 of the York County Registry of Deeds.
2. A portion of the property described in Paragraph 1 of this Agreement is located in a coastal wetland as defined by the *Natural Resources Protection Act*, 38 M.R.S.A. § 480-B(2). A coastal wetland is a protected natural resource pursuant to 38 M.R.S.A. § 480-B(8).
3. On November 3, 2009, an inspection of the property described in Paragraph 1 of this Agreement by Department staff revealed that Robert W. Barris III caused soil material to be placed in approximately 1,350 square feet of coastal wetland to create additional lawn area. Robert W. Barris III did not first obtain a permit from the Department for this activity. At the time of inspection, the project site was stabilized to staff's satisfaction.
4. By causing fill material to be placed in a coastal wetland without first obtaining a permit from the Department, Robert W. Barris III violated the *Natural Resources Protection Act*, 38 M.R.S.A. § 480-C.
5. On November 19, 2009, the Department issued a Notice of Violation to Robert W. Barris III regarding the violations described in Paragraphs 3 and 4 of this Agreement.
6. On January 18, 2010, Robert W. Barris III submitted a restoration plan to the Department to completely restore the disturbed coastal wetland on the property described in Paragraph 1 of this Agreement. All restoration will be completed in accordance with this plan, which has been approved by Department staff.

AUGUSTA

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IN THE MATTER OF:

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ROBERT W. BARRIS III
SACO, YORK, MAINE
NRPA
2009-137-L

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ADMINISTRATIVE CONSENT
AGREEMENT
(38 M.R.S.A. § 347-A)

7. By June 11, 2010, Robert W. Barris III removed fill material and restored vegetation in the disturbed coastal wetland in accordance with the approved restoration plan and to staff's satisfaction.
8. The Department has regulatory authority over the activities described herein.
9. Pursuant to 38 M.R.S.A. §§ 341-D(6)(C) and 347-A(1)(A)(1), administrative consent agreements must be approved by the Board of Environmental Protection (the "Board") which is part of the Department.
10. This Agreement shall become effective only if it is approved by the Board and the Office of the Attorney General.
11. To resolve the violations referred to in Paragraphs 3 and 4 of this Agreement, Robert W. Barris III agrees to:
 - A. No later than June 30, 2011, monitor the restoration area for reasonable success in accordance with the approved restoration plan and to staff's satisfaction.
 - B. Pay to the Treasurer, State of Maine, upon demand by the Department, the sum of one hundred dollars (\$100.00) per day per violation for the violation of any provision of this consent agreement.
 - C. Pay the Treasurer, State of Maine, in accordance with the following, the sum of two thousand six hundred eighty two dollars (\$2,682.00) as a civil monetary penalty.
 - i. Upon signing the Agreement pay the sum of one thousand three hundred forty one dollars (\$1,341.00).
 - ii. No later than September 20, 2010, pay the sum of one thousand three hundred forty one dollars (\$1,341.00).
12. The Department and Office of the Attorney General grant a release of their causes of action against Robert W. Barris III for the specific violations listed in Paragraphs 3 and 4 of this Agreement on the express condition that all actions listed in Paragraph 11 of this Agreement, as applicable, are completed in accordance with the express terms and conditions of this Agreement. The release shall not become effective until this condition is satisfied.

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IN THE MATTER OF:

ROBERT W. BARRIS III
SACO, YORK, MAINE
NRPA
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ADMINISTRATIVE CONSENT
AGREEMENT
(38 M.R.S.A. § 347-A)

IN WITNESS WHEREOF the parties hereto have executed this Agreement consisting of three (3) pages.

ROBERT W. BARRIS III



ROBERT W. BARRIS III

DATE: July 21, 2010

MAINE BOARD OF ENVIRONMENTAL PROTECTION

BY: _____ DATE: _____
SUSAN M. LESSARD, CHAIR

MAINE OFFICE OF THE ATTORNEY GENERAL

BY: _____ DATE: _____
MARGARET A. BENSINGER, ASSISTANT ATTORNEY GENERAL